

111TH CONGRESS  
1ST SESSION

# S. 183

To establish the Dominguez-Escalante National Conservation Area and the  
Dominguez Canyon Wilderness Area.

---

## IN THE SENATE OF THE UNITED STATES

JANUARY 8, 2009

Mr. SALAZAR (for himself and Mr. UDALL of Colorado) introduced the fol-  
lowing bill; which was read twice and referred to the Committee on En-  
ergy and Natural Resources

---

## A BILL

To establish the Dominguez-Escalante National Conservation  
Area and the Dominguez Canyon Wilderness Area.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Dominguez-Escalante  
5       National Conservation Area and Dominguez Canyon Wil-  
6       derness Area Act”.

7       **SEC. 2. DEFINITIONS.**

8       In this Act:

9               (1) CONSERVATION AREA.—The term “Con-  
10       servation Area” means the Dominguez-Escalante

1 National Conservation Area established by section  
2 3(a)(1).

3 (2) COUNCIL.—The term “Council” means the  
4 Dominguez-Escalante National Conservation Area  
5 Advisory Council established under section 8.

6 (3) MANAGEMENT PLAN.—The term “manage-  
7 ment plan” means the management plan developed  
8 under section 7.

9 (4) MAP.—The term “Map” means the map en-  
10 titled “Dominguez-Escalante National Conservation  
11 Area” and dated September 10, 2008.

12 (5) SECRETARY.—The term “Secretary” means  
13 the Secretary of the Interior.

14 (6) STATE.—The term “State” means the State  
15 of Colorado.

16 (7) WILDERNESS.—The term “Wilderness”  
17 means the Dominguez Canyon Wilderness Area des-  
18 ignated by section 4(a).

19 **SEC. 3. DOMINGUEZ-ESCALANTE NATIONAL CONSERVA-**  
20 **TION AREA.**

21 (a) ESTABLISHMENT.—

22 (1) IN GENERAL.—There is established the  
23 Dominguez-Escalante National Conservation Area in  
24 the State.

1           (2) AREA INCLUDED.—The Conservation Area  
2       shall consist of approximately 209,600 acres of pub-  
3       lic land, as generally depicted on the Map.

4       (b) PURPOSES.—The purposes of the Conservation  
5       Area are to conserve and protect for the benefit and enjoy-  
6       ment of present and future generations—

7           (1) the unique and important resources and val-  
8       ues of the land, including the geological, cultural, ar-  
9       chaeological, paleontological, natural, scientific, rec-  
10      reational, wilderness, wildlife, riparian, historical,  
11      educational, and scenic resources of the public land;  
12      and

13          (2) the water resources of area streams, based  
14      on seasonally available flows, that are necessary to  
15      support aquatic, riparian, and terrestrial species and  
16      communities.

17      (c) MANAGEMENT.—

18          (1) IN GENERAL.—The Secretary shall manage  
19      the Conservation Area—

20              (A) as a component of the National Land-  
21          scape Conservation System;

22              (B) in a manner that conserves, protects,  
23          and enhances the resources and values of the  
24          Conservation Area described in subsection (b);  
25          and

1 (C) in accordance with—

2 (i) the Federal Land Policy and Man-  
3 agement Act of 1976 (43 U.S.C. 1701 et  
4 seq.);

5 (ii) this Act; and

6 (iii) any other applicable laws.

7 (2) USES.—

8 (A) IN GENERAL.—The Secretary shall  
9 allow only such uses of the Conservation Area  
10 as the Secretary determines would further the  
11 purposes for which the Conservation Area is es-  
12 tablished.

13 (B) USE OF MOTORIZED VEHICLES.—

14 (i) IN GENERAL.—Except as provided  
15 in clauses (ii) and (iii), use of motorized  
16 vehicles in the Conservation Area shall be  
17 allowed—

18 (I) before the effective date of  
19 the management plan, only on roads  
20 and trails designated for use of motor  
21 vehicles in the management plan that  
22 applies on the date of the enactment  
23 of this Act to the public land in the  
24 Conservation Area; and

1 (II) after the effective date of the  
 2 management plan, only on roads and  
 3 trails designated in the management  
 4 plan for the use of motor vehicles.

5 (ii) ADMINISTRATIVE AND EMER-  
 6 GENCY RESPONSE USE.—Clause (i) shall  
 7 not limit the use of motor vehicles in the  
 8 Conservation Area for administrative pur-  
 9 poses or to respond to an emergency.

10 (iii) LIMITATION.—This subparagraph  
 11 shall not apply to the Wilderness.

12 **SEC. 4. DOMINGUEZ CANYON WILDERNESS AREA.**

13 (a) IN GENERAL.—In accordance with the Wilderness  
 14 Act (16 U.S.C. 1131 et seq.), the approximately 66,280  
 15 acres of public land in Mesa, Montrose, and Delta Coun-  
 16 ties, Colorado, as generally depicted on the Map, is des-  
 17 ignated as wilderness and as a component of the National  
 18 Wilderness Preservation System, to be known as the  
 19 “Dominguez Canyon Wilderness Area”.

20 (b) ADMINISTRATION OF WILDERNESS.—The Wilder-  
 21 ness shall be managed by the Secretary in accordance with  
 22 the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act,  
 23 except that—

1           (1) any reference in the Wilderness Act to the  
2           effective date of that Act shall be considered to be  
3           a reference to the date of enactment of this Act; and

4           (2) any reference in the Wilderness Act to the  
5           Secretary of Agriculture shall be considered to be a  
6           reference to the Secretary of the Interior.

7   **SEC. 5. MAPS AND LEGAL DESCRIPTIONS.**

8           (a) IN GENERAL.—As soon as practicable after the  
9           date of enactment of this Act, the Secretary shall file a  
10          map and a legal description of the Conservation Area and  
11          the Wilderness with—

12           (1) the Committee on Energy and Natural Re-  
13           sources of the Senate; and

14           (2) the Committee on Natural Resources of the  
15           House of Representatives.

16          (b) FORCE AND EFFECT.—The Map and legal de-  
17          scriptions filed under subsection (a) shall have the same  
18          force and effect as if included in this Act, except that the  
19          Secretary may correct clerical and typographical errors in  
20          the Map and legal descriptions.

21          (c) PUBLIC AVAILABILITY.—The Map and legal de-  
22          scriptions filed under subsection (a) shall be available for  
23          public inspection in the appropriate offices of the Bureau  
24          of Land Management.

1 **SEC. 6. MANAGEMENT OF CONSERVATION AREA AND WIL-**  
2 **DERNESS.**

3 (a) WITHDRAWAL.—Subject to valid existing rights,  
4 all Federal land within the Conservation Area and the Wil-  
5 derness and all land and interests in land acquired by the  
6 United States within the Conservation Area or the Wilder-  
7 ness is withdrawn from—

8 (1) all forms of entry, appropriation, or disposal  
9 under the public land laws;

10 (2) location, entry, and patent under the mining  
11 laws; and

12 (3) operation of the mineral leasing, mineral  
13 materials, and geothermal leasing laws.

14 (b) GRAZING.—

15 (1) GRAZING IN CONSERVATION AREA.—Except  
16 as provided in paragraph (2), the Secretary shall  
17 issue and administer any grazing leases or permits  
18 in the Conservation Area in accordance with the  
19 laws (including regulations) applicable to the  
20 issuance and administration of such leases and per-  
21 mits on other land under the jurisdiction of the Bu-  
22 reau of Land Management.

23 (2) GRAZING IN WILDERNESS.—The grazing of  
24 livestock in the Wilderness, if established as of the  
25 date of enactment of this Act, shall be permitted to  
26 continue—

(A) subject to any reasonable regulations, policies, and practices that the Secretary determines to be necessary; and

(B) in accordance with—

(i) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and

(ii) the guidelines set forth in Appendix A of the report of the Committee on Interior and Insular Affairs of the House of Representatives accompanying H.R. 2570 of the 101st Congress (H. Rept. 101-405).

(c) NO BUFFER ZONES.—

(1) IN GENERAL.—Nothing in this Act creates a protective perimeter or buffer zone around the Conservation Area.

(2) ACTIVITIES OUTSIDE CONSERVATION AREA.—The fact that an activity or use on land outside the Conservation Area can be seen or heard within the Conservation Area shall not preclude the activity or use outside the boundary of the Conservation Area.

(d) ACQUISITION OF LAND.—

(1) IN GENERAL.—The Secretary may acquire non-Federal land within the boundaries of the Con-

1        servation Area or the Wilderness only through ex-  
 2        change, donation, or purchase from a willing seller.

3            (2) MANAGEMENT.—Land acquired under para-  
 4        graph (1) shall—

5            (A) become part of the Conservation Area  
 6            and, if applicable, the Wilderness; and

7            (B) be managed in accordance with this  
 8            Act and any other applicable laws.

9        (e) FIRE, INSECTS, AND DISEASES.—Subject to such  
 10       terms and conditions as the Secretary determines to be  
 11       desirable and appropriate, the Secretary may undertake  
 12       such measures as are necessary to control fire, insects,  
 13       and diseases—

14            (1) in the Wilderness, in accordance with sec-  
 15       tion 4(d)(1) of the Wilderness Act (16 U.S.C.  
 16       1133(d)(1)); and

17            (2) except as provided in paragraph (1), in the  
 18       Conservation Area in accordance with this Act and  
 19       any other applicable laws.

20       (f) ACCESS.—The Secretary shall continue to provide  
 21       private landowners adequate access to inholdings in the  
 22       Conservation Area.

23       (g) INVASIVE SPECIES AND NOXIOUS WEEDS.—In  
 24       accordance with any applicable laws and subject to such  
 25       terms and conditions as the Secretary determines to be

1 desirable and appropriate, the Secretary may prescribe  
2 measures to control nonnative invasive plants and noxious  
3 weeds within the Conservation Area.

4 (h) WATER RIGHTS.—

5 (1) EFFECT.—Nothing in this Act—

6 (A) affects the use or allocation, in exist-  
7 ence on the date of enactment of this Act, of  
8 any water, water right, or interest in water;

9 (B) affects any vested absolute or decreed  
10 conditional water right in existence on the date  
11 of enactment of this Act, including any water  
12 right held by the United States;

13 (C) affects any interstate water compact in  
14 existence on the date of enactment of this Act;

15 (D) authorizes or imposes any new re-  
16 served Federal water rights; or

17 (E) shall be considered to be a relinquish-  
18 ment or reduction of any water rights reserved  
19 or appropriated by the United States in the  
20 State on or before the date of enactment of this  
21 Act.

22 (2) WILDERNESS WATER RIGHTS.—

23 (A) IN GENERAL.—The Secretary shall en-  
24 sure that any water rights within the Wilder-  
25 ness required to fulfill the purposes of the Wil-

1           derness are secured in accordance with sub-  
2           paragraphs (B) through (G).

3           (B) STATE LAW.—

4           (i) PROCEDURAL REQUIREMENTS.—

5           Any water rights within the Wilderness for  
6           which the Secretary pursues adjudication  
7           shall be adjudicated, changed, and admin-  
8           istered in accordance with the procedural  
9           requirements and priority system of State  
10          law.

11          (ii) ESTABLISHMENT OF WATER  
12          RIGHTS.—

13               (I) IN GENERAL.—Except as pro-  
14               vided in subclause (II), the purposes  
15               and other substantive characteristics  
16               of the water rights pursued under this  
17               paragraph shall be established in ac-  
18               cordance with State law.

19               (II) EXCEPTION.—Notwith-  
20               standing subclause (I) and in accord-  
21               ance with this Act, the Secretary may  
22               appropriate and seek adjudication of  
23               water rights to maintain surface water  
24               levels and stream flows on and across

1 the Wilderness to fulfill the purposes  
2 of the Wilderness.

3 (C) DEADLINE.—The Secretary shall  
4 promptly, but not earlier than January 2009,  
5 appropriate the water rights required to fulfill  
6 the purposes of the Wilderness.

7 (D) REQUIRED DETERMINATION.—The  
8 Secretary shall not pursue adjudication for any  
9 instream flow water rights unless the Secretary  
10 makes a determination pursuant to subpara-  
11 graph (E)(ii) or (F).

12 (E) COOPERATIVE ENFORCEMENT.—

13 (i) IN GENERAL.—The Secretary shall  
14 not pursue adjudication of any Federal  
15 instream flow water rights established  
16 under this paragraph if—

17 (I) the Secretary determines,  
18 upon adjudication of the water rights  
19 by the Colorado Water Conservation  
20 Board, that the Board holds water  
21 rights sufficient in priority, amount,  
22 and timing to fulfill the purposes of  
23 the Wilderness; and

24 (II) the Secretary has entered  
25 into a perpetual agreement with the

1 Colorado Water Conservation Board  
2 to ensure the full exercise, protection,  
3 and enforcement of the State water  
4 rights within the Wilderness to reli-  
5 ably fulfill the purposes of the Wilder-  
6 ness.

7 (ii) ADJUDICATION.—If the Secretary  
8 determines that the provisions of clause (i)  
9 have not been met, the Secretary shall ad-  
10 judicate and exercise any Federal water  
11 rights required to fulfill the purposes of  
12 the Wilderness in accordance with this  
13 paragraph.

14 (F) INSUFFICIENT WATER RIGHTS.—If the  
15 Colorado Water Conservation Board modifies  
16 the instream flow water rights obtained under  
17 subparagraph (E) to such a degree that the  
18 Secretary determines that water rights held by  
19 the State are insufficient to fulfill the purposes  
20 of the Wilderness, the Secretary shall adju-  
21 dicate and exercise Federal water rights re-  
22 quired to fulfill the purposes of the Wilderness  
23 in accordance with subparagraph (B).

24 (G) FAILURE TO COMPLY.—The Secretary  
25 shall promptly act to exercise and enforce the

1 water rights described in subparagraph (E) if  
 2 the Secretary determines that—

3 (i) the State is not exercising its  
 4 water rights consistent with subparagraph  
 5 (E)(i)(I); or

6 (ii) the agreement described in sub-  
 7 paragraph (E)(i)(II) is not fulfilled or com-  
 8 plied with sufficiently to fulfill the pur-  
 9 poses of the Wilderness.

10 (3) WATER RESOURCE FACILITY.—

11 (A) IN GENERAL.—Notwithstanding any  
 12 other provision of law and subject to subpara-  
 13 graph (B), beginning on the date of enactment  
 14 of this Act, neither the President nor any other  
 15 officer, employee, or agent of the United States  
 16 shall fund, assist, authorize, or issue a license  
 17 or permit for the development of any new irri-  
 18 gation and pumping facility, reservoir, water  
 19 conservation work, aqueduct, canal, ditch, pipe-  
 20 line, well, hydropower project, transmission,  
 21 other ancillary facility, or other water, diver-  
 22 sion, storage, or carriage structure in the Wil-  
 23 derness.

24 (B) EXCEPTION.—Notwithstanding sub-  
 25 paragraph (A), the Secretary may allow con-

struction of new livestock watering facilities  
within the Wilderness in accordance with—

(i) section 4(d)(4) of the Wilderness  
Act (16 U.S.C. 1133(d)(4)); and

(ii) the guidelines set forth in Appen-  
dix A of the report of the Committee on  
Interior and Insular Affairs of the House  
of Representatives accompanying H.R.  
2570 of the 101st Congress (H. Rept.  
101–405).

(4) CONSERVATION AREA WATER RIGHTS.—

With respect to water within the Conservation Area,  
nothing in this Act—

(A) authorizes any Federal agency to ap-  
propriate or otherwise acquire any water right  
on the mainstem of the Gunnison River; or

(B) prevents the State from appropriating  
or acquiring, or requires the State to appro-  
priate or acquire, an instream flow water right  
on the mainstem of the Gunnison River.

(5) WILDERNESS BOUNDARIES ALONG GUNNI-  
SON RIVER.—

(A) IN GENERAL.—In areas in which the  
Gunnison River is used as a reference for defin-

1           ing the boundary of the Wilderness, the bound-  
2           ary shall—

3                       (i) be located at the edge of the river;

4                       and

5                       (ii) change according to the river  
6                       level.

7                       (B) EXCLUSION FROM WILDERNESS.—Re-  
8                       gardless of the level of the Gunnison River, no  
9                       portion of the Gunnison River is included in the  
10                      Wilderness.

11           (i) EFFECT.—Nothing in this Act—

12                       (1) diminishes the jurisdiction of the State with  
13                       respect to fish and wildlife in the State; or

14                       (2) imposes any Federal water quality standard  
15                       upstream of the Conservation Area or within the  
16                       mainstem of the Gunnison River that is more re-  
17                       strictive than would be applicable had the Conserva-  
18                       tion Area not been established.

19           (j) VALID EXISTING RIGHTS.—The designation of  
20           the Conservation Area and Wilderness is subject to valid  
21           rights in existence on the date of enactment of this Act.

22   **SEC. 7. MANAGEMENT PLAN.**

23           (a) IN GENERAL.—Not later than 3 years after the  
24           date of enactment of this Act, the Secretary shall develop

1 a comprehensive management plan for the long-term pro-  
2 tection and management of the Conservation Area.

3 (b) PURPOSES.—The management plan shall—

4 (1) describe the appropriate uses and manage-  
5 ment of the Conservation Area;

6 (2) be developed with extensive public input;

7 (3) take into consideration any information de-  
8 veloped in studies of the land within the Conserva-  
9 tion Area; and

10 (4) include a comprehensive travel management  
11 plan.

12 **SEC. 8. ADVISORY COUNCIL.**

13 (a) ESTABLISHMENT.—Not later than 180 days after  
14 the date of enactment of this Act, the Secretary shall es-  
15 tablish an advisory council, to be known as the  
16 “Dominguez-Escalante National Conservation Area Advi-  
17 sory Council”.

18 (b) DUTIES.—The Council shall advise the Secretary  
19 with respect to the preparation and implementation of the  
20 management plan.

21 (c) APPLICABLE LAW.—The Council shall be subject  
22 to—

23 (1) the Federal Advisory Committee Act (5  
24 U.S.C. App.); and

1           (2) the Federal Land Policy and Management  
2       Act of 1976 (43 U.S.C. 1701 et seq.).

3       (d) MEMBERS.—The Council shall include 10 mem-  
4       bers to be appointed by the Secretary, of whom, to the  
5       extent practicable—

6           (1) 1 member shall be appointed after consid-  
7       ering the recommendations of the Mesa County  
8       Commission;

9           (2) 1 member shall be appointed after consid-  
10      ering the recommendations of the Montrose County  
11      Commission;

12          (3) 1 member shall be appointed after consid-  
13      ering the recommendations of the Delta County  
14      Commission;

15          (4) 1 member shall be appointed after consid-  
16      ering the recommendations of the permittees holding  
17      grazing allotments within the Conservation Area or  
18      the Wilderness; and

19          (5) 5 members shall reside in, or within reason-  
20      able proximity to, Mesa County, Delta County, or  
21      Montrose County, Colorado, with backgrounds that  
22      reflect—

23              (A) the purposes for which the Conserva-  
24      tion Area or Wilderness was established; and

1 (B) the interests of the stakeholders that  
2 are affected by the planning and management  
3 of the Conservation Area and Wilderness.

4 (e) REPRESENTATION.—The Secretary shall ensure  
5 that the membership of the Council is fairly balanced in  
6 terms of the points of view represented and the functions  
7 to be performed by the Council.

8 (f) DURATION.—The Council shall terminate on the  
9 date that is 1 year from the date on which the manage-  
10 ment plan is adopted by the Secretary.

11 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated such sums  
13 as are necessary to carry out this Act.

○